



Jeb Bush  
Governor

# Department of Environmental Protection

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3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Colleen M. Castille  
Secretary

February 28, 2006

U.S. Department of the Interior  
Minerals Management Service  
Attention: Rules Processing Team  
381 Elden Street  
MS – 4024  
Herndon, Virginia 20170-4817

Re: Minerals Management Service, Advanced Notice of Proposed Rule Making, Alternate  
Energy Related Uses on the Outer Continental Shelf.  
**Regulation Identifier Number 1010-AD30**

Dear Sir/Madam:

The Florida Department of Environmental Protection (Department) has completed a review and coordinated a state review of the Minerals Management Service's (MMS) December 30, 2005 Federal Register Advance Notice of Proposed Rulemaking (ANPR) seeking comments on the development of a regulatory program to implement portions of the Energy Policy Act of 2005, Section 388 – Alternate Energy-Related Uses on the Outer Continental Shelf (OCS). In the ANPR, the MMS specifically requested comments regarding energy development from sources other than oil and gas and alternate uses of existing facilities.

As the MMS, stakeholders and affected parties develop a framework for an alternative energy uses program, it is imperative that sound engineering, science and environmental protection principles and standards be employed both in developing and implementing the program. Since the MMS already has effective programs and regulations for the different phases of the OCS oil and gas development such as leasing, environmental studies, and compliance and enforcement, it would be appropriate to use the framework for these programs in developing the alternative energy uses program and its implementing regulations. As recognized by the MMS in the ANPR, Florida strongly agrees that coordination and consultation are vital aspects of the program areas outlined. The state offers the following preliminary remarks regarding the request for comment on the five major program areas listed in the notice.

## Access to OCS Lands and Resources

In addition to excluding marine sanctuaries and national parks, wildlife refuges, and monuments, there are likely to be other areas of the OCS that should be excluded from certain alternative energy activities. Therefore, the program should be flexible enough to allow for specific areas to be removed from the program should their inclusion result in unacceptable environmental impact or significant use conflicts. Examples of areas that require further analyses to determine which, if any, alternative energy activities could be allowed include areas such as shipping lanes, military use areas, live-bottom or coral reef habitats, and essential fish habitats. It may be appropriate to allow certain types of activities in specific areas. For example, those

alternative energy use activities that do not cause bottom disturbances may be acceptable in areas occupied by important benthic or hard bottom habitats.

State and local governments should be involved early in siting decisions to ensure that activities occurring in federal waters with related components that would be sited on submerged and onshore lands are able to be conducted in specific geographic areas.

Analyses for the program should include the potential for phased access rights to an area prior to a lessee conducting site specific assessments and research. This could be similar to the Federal Energy Regulatory Commission's procedures for preliminary permits and competing applications for hydropower projects. Since alternative energy technologies are continuing to be further developed and refined, it seems appropriate to consider phased access rights in the program. However, the regulations must require due diligence, to complete environmental and engineering studies, construction and begin operations in a time certain.

#### Environmental Information, Management, and Compliance

As noted above, the MMS has an effective program for gathering environmental information necessary for evaluating the effects of offshore proposals. Some of the information previously obtained in studies through MMS contracts may provide a broad brush or background information regarding the resources and physical parameters of a particular area of the OCS. The MMS could use this information and existing information from other sources to help build the necessary data base for evaluating potential impacts.

It is questionable whether it will be possible to adequately assess the effects of all types of alternative energy projects, especially those employing new and innovative technologies. In these cases it may be beneficial and appropriate for the program to provide for small pilot projects and extensive monitoring to assist in evaluating long-term and cumulative effects of proposed alternative energy projects.

Compliance with environmental and safety requirements is a critical component of the proposed program. It will be important for the MMS to have adequate funding to accomplish necessary compliance requirements.

#### Operational Activities

As discussed above, the use of pilot projects may be an appropriate way to determine both the feasibility and effects of a proposed project.

#### Payments and Revenues

While we are not sure if there would be enough demand to conduct competitive leasing similar to OCS lease sales for all areas, development of the program should consider, at a minimum, requiring preliminary permits and providing the opportunity for competing applications.

The lease payment and revenue system used for the OCS oil and gas leasing program could be the model for the alternative energy uses program. Revenues should be based on revenue potential at full operation and the life of the project.

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Coordination and Consultation

As previously mentioned, Florida strongly agrees that coordination and consultation are vital aspects of the program areas outlined. As with the OCS oil and gas leasing program, individual lease sales and post-lease activities and related development activities, compliance with other federal laws (e.g., the Coastal Zone Management Act) is required. In addition, early consultation and coordination with affected parties should help in resolving potential conflicts early in the process.

Additional comments received by the Department regarding the ANPR are enclosed for your consideration. We appreciate the opportunity to comment on the ANPR and look forward to working with the MMS as the rule is developed. Should you have any questions, please contact me or Debby Tucker at (850) 245-2163.

Cordially,

A handwritten signature in black ink, appearing to read "Lynn F. Griffin". The signature is fluid and cursive, with the first name "Lynn" being more prominent.

Lynn F. Griffin  
Coastal Program Administrator

Enclosures